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7 **UNITED STATES DISTRICT COURT**
8 **SOUTHERN DISTRICT OF CALIFORNIA**
9

10 JOHN CORTES,

11 Plaintiff,

12 vs.

13 LIGHTHOUSE RECOVERY
14 ASSOCIATES, LLC,

15 Defendant.

CASE NO. 13cv674-MMA (BLM)

**ORDER GRANTING PLAINTIFF'S
MOTION FOR DEFAULT
JUDGMENT**

[Doc. No. 8]

16
17 Plaintiff John Cortes filed this action against Defendant Lighthouse Recovery
18 Associates, LLC for violations of California's Invasion of Privacy Act. Doc. No. 1.
19 Plaintiff now moves the Court for default judgment. The Court, in its discretion,
20 found the matter suitable for determination on the papers and without oral argument
21 pursuant to Local Rule 7.1(d)(1). For the reasons stated below, the Court **GRANTS**
22 Plaintiff's motion for default judgment.

23 **BACKGROUND**

24 Plaintiff, an individual, is a California resident. Doc. No. 1 ¶ 3. Defendant is
25 a Colorado corporation with its principal place of business in Colorado.¹ *Id.* In the
26

27 ¹ The Complaint alleges that Defendant is both a California and Colorado
28 corporation. *See* Compl. ¶¶ 3, 6. Lighthouse Recovery Associates, LLC is registered
with the California Secretary of State and states its entity address as Denver, Colorado.
Additionally, Defendant is registered with the Colorado Secretary of State as a

1 Complaint, Plaintiff alleges that on March 12, 2013, Defendant called Plaintiff to
 2 inquire about a client that Plaintiff's company represented regarding a debt. *Id.* ¶
 3 10. During the conversation, Plaintiff discussed his client's personal financial
 4 information. *Id.* After divulging this information, Plaintiff asked whether
 5 Defendant was recording the conversation. Only then did Defendant inform Plaintiff
 6 that it was in fact recording the conversation. Plaintiff asserts that he neither knew
 7 of the recording nor consented to it. Plaintiff contends that he discussed highly
 8 confidential, financial information that he had not openly discussed with others. *Id.*
 9 ¶ 11. Plaintiff also alleges that he had no reasonable expectation that Defendant
 10 would be recording the conversation due to the private subject matter. *Id.* ¶ 12.

11 On March 21, 2013, Plaintiff filed this action against Defendant, alleging a
 12 violation of California Penal Code section 632.²

13 On April 18, 2013, Plaintiff filed a summons returned executed, indicating
 14 that Defendant had been served on April 2, 2013. Doc. No. 4. To date, Defendant
 15 has not appeared in the case.

16 On October 22, 2013, the Court set a dismissal hearing for want of
 17 prosecution pursuant to Local Rule 41.1. Doc. No. 5.

18 Plaintiff then moved the Clerk of Court for entry of default as to Defendant
 19 pursuant to Federal Rule of Civil Procedure 55(a). Doc. No. 6. The Clerk entered
 20 default against Defendant on October 30, 2013. Doc. No. 7.

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 22 Colorado corporation with its principal office in Denver, Colorado. As such, the Court
 is satisfied that Defendant is a Colorado corporation.

23 ² The complaint includes class allegations in addition to the factual allegations
 24 that provide the basis for Plaintiff's individual claim. However, Plaintiff has not moved
 25 for default judgment as to his class action allegations, nor would default judgment on
 those claims be appropriate. *See, e.g., Partington v. Am. Int'l Specialty Lines Ins. Co.*,
 26 443 F.3d 334, 340 (4th Cir. 2006) ("Federal courts may only adjudicate the rights of
 putative class members upon certification of that class under Federal Rule of Civil
 27 Procedure 23."); *Davis v. Hutchins*, 321 F.3d 641, 648–49 (7th Cir. 2003) ("There is
 the general principle that factual allegations in the complaint are deemed admitted by
 28 the defendant upon default; however, application of that general principle does not
 solve the class-certification issue. Rule 23(c) imposes an independent duty on the
 district court to determine by order that the requirements of Rule 23(a) are met
 regardless of the defendant's admissions.").

1 Plaintiff now moves the Court for entry of default judgment on his individual
 2 claim only pursuant to Federal Rule of Civil Procedure 55(b)(2). Plaintiff seeks
 3 \$5,000 in statutory damages.³

4 LEGAL STANDARD

5 If a defendant fails to defend an action in a timely manner, a plaintiff may
 6 move the Court for entry of default judgment. *See* Fed. R. Civ. P. 55(b)(2).
 7 Although default judgments are generally disfavored, *Eitel v. McCool*, 782 F.2d
 8 1470, 1472 (9th Cir. 1986), district courts have discretion to enter a default
 9 judgment. *See Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980) (per curiam).
 10 The Ninth Circuit has enumerated various factors for district courts to consider when
 11 deciding whether to enter default judgment:

- 12 (1) the possibility of prejudice to the plaintiff,
- 13 (2) the merits of plaintiff's substantive claim,
- 14 (3) the sufficiency of the complaint,
- 15 (4) the sum of money at stake in the action,
- 16 (5) the possibility of a dispute concerning material facts,
- 17 (6) whether the default was due to excusable neglect, and
- 18 (7) the strong policy underlying the Federal Rules of Civil
 Procedure favoring decisions on the merits.

19 *Eitel*, 782 F.2d at 1471–72.

20 Upon entry of default, the court deems the factual allegation in the complaint
 21 regarding liability as true. *Fair Hous. of Marin v. Combs*, 285 F.3d 899, 906 (9th
 22 Cir. 2002); *see also J & J Sports Prod., Inc. v. Ramos*, No. 11-CV-489, 2012 WL
 23 4575338, at *3 (S.D. Cal. Oct. 2, 2012). A court may enter a default judgment
 24 without a hearing where the amount of damages claimed is a liquidated sum or
 25 capable of mathematical calculation. *Davis v. Fendler*, 650 F.2d 1154, 1161 (9th
 26 Cir. 1981).

27 //

28 DISCUSSION

³ Plaintiff also seeks costs in the amount of \$485.00. Plaintiff, however, must
 seek to recover costs as set forth in Federal Rule of Civil Procedure 54(d) and Civil
 Local Rule 54.1. Accordingly, the Court declines to award costs as this time.

1 Here, the *Eitel* factors favor entry of default judgment. First, if the Court
2 declines to enter default judgment, Plaintiff will likely be without other recourse for
3 recovery. *See PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1177 (C.D.
4 Cal. 2002). As such, Plaintiff will likely suffer prejudice absent entry of default
5 judgment. This factor favors granting default judgment.

6 The next two factors—the merits of Plaintiff’s substantive claim and
7 sufficiency of the complaint—also support entry of default judgment. Plaintiff
8 alleges a violation of California Penal Code section 632, which prohibits a person
9 from recording a confidential communication without the consent of all parties. Cal.
10 Pen. Code § 632(a). Here, Plaintiff alleges that without Plaintiff’s knowledge or
11 consent, Defendant recorded a phone conversation with Plaintiff in which Plaintiff
12 was discussing his client’s personal financial information, which Plaintiff had not
13 discussed with others. Courts have recognized that a conversation regarding private,
14 financial information may constitute a confidential communication under the statute.
15 *See, e.g., Faulkner v. ADT Sec. Servs., Inc.*, 706 F.3d 1017, 1020, n.2 (9th Cir. 2013)
16 (recognizing a confidential communication where “a caller might be asked to verify
17 his identity by confirming his social security number or his unlisted telephone
18 number, or to disclose other private or potentially private information”); *Bales v.*
19 *Sierra Trading Post, Inc.*, No. 13cv1894 JM KSC, 2013 WL 6244529, at *3 (S.D.
20 Cal. Dec. 3, 2013) (“The disclosure of personal financial information is sufficient to
21 establish a confidential communication for purposes of § 632.”). Accordingly,
22 Plaintiff’s complaint and substantive claim both support granting default judgment.

23 Fourth, the sum of money at stake also supports entry of default judgment.
24 Pursuant to California Penal Code section 637.2(a), a plaintiff may recover damages
25 for a violation of the Invasion of Privacy Act totaling the greater of either \$5,000 or
26 three times the amount of actual damages. Cal. Pen. Code § 637.2(a). Here,
27 Plaintiff moves for entry of default judgment as to his individual claim only. As
28 such, he seeks statutory damages of \$5,000, which is the minimum award of

1 damages for a section 632 violation. *See Ion Equip. Corp. v. Nelson*, 110 Cal. App.
2 3d 868, 882, 168 Cal. Rptr. 361, 368 (1980); *Flanagan v. Flanagan*, 27 Cal. 4th 766,
3 776, 41 P.3d 575, 582 (2002). As such, this factor also favors granting default
4 judgment.

5 Fifth, the possibility of a dispute as to material facts is unlikely because
6 Defendant has not defended itself in the case, and there is no indication that it
7 intends to do so. *See Moroccanoil, Inc. v. Allstate Beauty Products, Inc.*, 847 F.
8 Supp. 2d 1197, 1202 (C.D. Cal. 2012). Moreover, upon the Clerk's entry of default,
9 the Court deems all well-pleaded facts in the complaint regarding liability as true.
10 *See PepsiCo*, 238 F. Supp. 2d at 1177. Therefore, the possibility of dispute as to any
11 material facts in this case is remote. This factor also favors granting default
12 judgement.

13 Sixth, Defendant's default does not appear to be a result of excusable neglect.
14 Defendant appears to have been properly served with the summons and complaint on
15 April 2, 2013. *See* Doc. No. 4. Defendant also appears to have been properly served
16 with Plaintiff's motion for default judgment. *See* Doc. No. 8-3. To date, Defendant
17 has not appeared in this action. Accordingly, this factor favors default judgment.

18 Finally, the Court must consider the strong policy of favoring decisions on the
19 merits. Although "[c]ases should be decided upon their merits whenever reasonably
20 possible," *Eitel*, 782 F.2d at 1472, "a decision on the merits is impractical, if not
21 impossible, when the defendant takes no part in the action." *Moroccanoil*, 847 F.
22 Supp. 2d at 1203. Thus, while a decision on the merits may be preferable,
23 Defendant has not appeared in the case and has thus prevented a decision on the
24 merits of Plaintiff's claim. This factor therefore does not preclude granting default
25 judgment against Defendant. *See PepsiCo*, 238 F. Supp. 2d at 1177.

26 The Court finds that the balance of *Eitel* factors weigh in favor entry of
27 default judgment. As to the amount of damages, Plaintiff has not sought actual
28 damages but instead statutory damages in the amount of \$5,000. Because Plaintiff

1 seeks statutory damages, a hearing on damages is not required. *See Davis*, 650 F.2d
2 at 1161. Further, as explained above, because section 637.2 provides for the greater
3 of \$5,000 or three times the amount of actual damages, if any, statutory damages of
4 \$5,000 is the minimum amount of damages for a violation. *See Ion Equip. Corp.*,
5 110 Cal. App. 3d at 882; *Flanagan*, 27 Cal. 4th at 776. As such, the Court awards
6 Plaintiff \$5,000 in statutory damages.

7 **CONCLUSION**

8 Based on the foregoing, the Court **GRANTS** Plaintiff's motion for default
9 judgment and **AWARDS** a total of \$5,000 in statutory damages to Plaintiff.

10 The Clerk shall enter judgment and close the case.

11 **IT IS SO ORDERED.**

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13 DATED: January 8, 2014

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15 Hon. Michael M. Anello
16 United States District Judge
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